fide. I therefore think that my friend Mr. H. Narasinga Rao and others are right in insisting that good faith is necessary even in cases of acts done in conformity with the provisions of law. But the learned Government Advocate said that good faith is necessary only when the act is intended to be done and not in cases of acts done. Here intention is not either criminally or civilly liable. We cannot punish intention; or we cannot hold the man intending liable. The real cause of action arises only when the payment is made. Any thing short of payment would be of no use. Others are only preliminary steps. Hence the amendment proposed by my friend may be adopted.

Mr. C. S. Doraswamy Iyer.—SIR,—As an abstract proposition of law, my legal friends are quite right in saying that undisclosed intention which is only in the mind of the person intending is not either punishable or actionable. But, if his intention is made manifest by words spoken or by acts done which the law will recognise as the expression of his intention, then I do not think that such overt acts will not be actionable in law. What section 5 is intended to convey is that for an act done, if intended *bona fide* to be done in pursuance of the Regulation, protection must be afforded. Protection is given not for *bona fide* unexpressed intentions but for acts intended in good faith to have been done.

Under section 3, clause (*a*), payment shall have to be made to the person entitled to receive it according to the rules of the Fund, and secondly, in the absence of a rule to the contrary, to the registered nominee of the deceased; in default, to the person that produces a certificate from a competent court empowering him to receive it. It is only in a case which is not disposed of in the above manner, that the officer authorised to make payments, sits as a judicial officer makes a reasonable inquiry and directs payment, provided it does not exceed one thousand rupees, to the person who, as the result of such inquiry is in his opinion entitled to receive it. His act being a judicial act, he requires protection in the same manner in which judicial officers in similar circumstances will be protected. If the officer does a thing which is contrary to law, then as I stated already he is not protected for obvious reasons. If he takes precaution in a reasonable manner, to conform to the provisions of law, then his acts, if *bona fide* intended to be done under the Regulation will, I need not repeat, be protected. Mr. Narasinga Rao, as I understood him, said that there could possibly be no acts which might be intended to be done and are not actually done. In his view, therefore, the words "intended to be done" in section 5 are mere surplusage and are out of place in the statute. He is also of opinion that, there could possibly be no action taken against the officer, in such circumstances. I beg to submit as an example that if, between the date of the order directing payment and of the actual payment, we consider that there is an act done and an intention expressed to do another act later on, is there not an opportunity afforded, for the paying officer if he is not statutorily protected, being proceeded against, by means of an injunction in the interval. I need hardly add that the Regulation will not stand in the way of the rightful claimant establishing his right against the wrongful payee and recovering the amount paid to him. I do not think therefore that any fresh light has been thrown as to why we should depart from the phraseology adopted by the Select Committee to whom the Government of India Bill was referred.

Mr. M. Basava Iya.—SIR,—Both the classes of cases namely, where an act is done, that is, payment is made and where it has not gone so far but still is in the intention where the officer orders that payment may be made but the payment is not actually made—such classes of cases may be considered in the light of the present clause. If only a comma is placed after "in respect of anything done or in good faith intended to be done," the differentiation will be clear.

Mr. A. R. Banerji.—SIR,—We have had a learned discussion on the actual phraseology to be adopted in clause 5. Perhaps I may add another remark to show that there is a deliberate intention in adhering to this phraseology in this Bill. So far as protecting clauses are concerned, we see in some other Acts that protection has been given to Government Officers of Departments such as Excise, when they do certain things in pursuance of the powers vested in them by the Legislature and

such protection is always qualified by the word "*bona fide*" that is to say, protection is given only when acts done or ordered to be done are acts based on good faith. I may only refer you to Section 72 of the Abkari Act. For example, "No action shall lie against the Secretary of State for India in Council, or against any Abkari Officer, for damages in any Civil Court for any acts *bona fide* done or ordered to be done in pursuance of this Act or of any law for the time being in force relating to Abkari revenue." Here the qualifying words apply to both acts done and ordered to be done. In the Bill now before us I have attempted to explain that there is a differentiation between an act done and an act intended to be done. The only act to be done under the Bill is the actual payment. So, if the Council prefers to introduce the word "payment" in clause 5 instead of the expression "anything done" I do not think there will be any material change of meaning. What I wish, however, to point out is, that the Government of India phraseology which we propose to adopt is intended to make a distinction between the actual payment which requires no qualifying phrase as to whether it was made in good or bad faith and an intended payment. In other words, if the rules are followed and payment made there is no question of bad faith. For, in pursuance of the Regulation if a payment is made to a person entitled under the rules, the officer must be permitted so to do and no interference should be allowed, for instance, by the stay orders of any Civil Court. But in regard to acts intended to be done the protection is qualified by the usual rules applicable to such protections which have been followed in other Acts namely, that the act must be intended to be done in good faith. I think that is the main distinction. If Mr. H. Narasinga Rao's amendment which I felt inclined to accept purports to be this, *viz.*, put a comma after "anything done," the meaning remains the same; on this condition only the amendment may be accepted; otherwise, the wording may be remain as it is. Government are unable to accept the amendment.

Mr. Narasinga Rao's amendment was put to vote and lost.

Mr. M. Basava Iya.—SIR,—The officer in charge or other person who is looking after the distribution of money to the heirs of the deceased would be entitled to give the money without taking any security from them. If the heir of the deceased should happen to be a pauper, the difficulty would be that the officer making the payment after some enquiry which would be only departmental and not judicial would be protected by this section and there can be so suit against him. The question then would be whether there should be an appeal or an original suit. If there should be an original suit and a decree amongst two rival claimants the defendant being a pauper the difficulty would be that there will be no remedy against him. Therefore I suggest that words which would import the meaning that the person who takes the money from the officer shall give some security, should be inserted. The following may be inserted in clause 3 (*a*) after "rules of the fund"—namely "on his furnishing security."

Rajamantrapravina Dewan Bahadur Mr. J. S. Chakravarti.—SIR,—This amendment strikes at the very root of the principle underlying the Bill. The rules of a Fund may lay down that the Provident Fund amount will be paid to certain surviving relation, failing such relations to certain other relation and so on. An officer knows exactly to whom his money will be made over in ordinary course in case of his death if he does not make a separate nomination. So his not making a nomination is an implied nomination in favour of the person entitled to receive the amount under the rules of the Fund. I cannot understand why security should be demanded from such a person who is practically a nominee. In other cases the question of security to be taken must be left to the discretion of the authority making the payment. The provision of the Bill is only permissive. If the other interested parties give information to the Provident Fund authorities that there will be difficulties afterwards if the payment is made, then necessary precaution will be taken. But if the authority is satisfied beyond doubt or beyond reasonable doubt, about the validity of the claim, he may not take security. The mover of the amendment apprehends that mistakes may be made and that if a wrong payment is made without security and the recipient is not solvent the rightful claimant will have no remedy. But such cases will arise only under a very rare combination of circumstances, *viz.*, (i) that the responsible officer will commit blunders or be guilty

of dishonest collusion, (ii) that the parties to which payment is made will be paupers. Fearing loss in such rare and remote cases, it is proposed to deny redress urgently required in hundreds of cases. For to require security will be to practically repeat the very difficulty now encountered by the parties in law courts. I therefore think that the amendment or suggestion of Mr. Basavaiya should not be accepted.

Mr. M. Chengiah Chetty.—SIR,—If the amendment is adopted, the object of the Bill will be altogether frustrated. I know of a case in which the widow had to wait for eight years for the amount. Although she has got money in the Insurance office she is compelled to go a-begging. The object will be thoroughly frustrated if you demand security. The provisions are just and reasonable and I hope the officers will have thorough commonsense in making payments properly.

Mr. Basava Iya's amendment was not put to vote as no notice of it had been given as required by the rules.

The original motion was put to vote and passed.

Mr. A. R. Banerji.—SIR,—I now beg to move that the Bill as amended be passed.

Rajamantrapravina Dewan Bahadur Mr. J. S. Chakravarti.—SIR,—I beg to second the motion.

The motion was put to vote and passed.

Bill to amend the Tank Panchayet Regulation, 1911.

Mr. A. R. Banerji.—SIR,—I beg to move that the Report of the Select Committee on the Bill to amend the Tank Panchayet Regulation, 1911, together with the Bill as amended by them be considered in Council. The members of this Council may remember that the Bill was introduced last February and read in Council and referred to the Select Committee on the 28th April. The Select Committee's report which is before the Members makes only one material alteration and that is in regard to clause 2. The definition of "raiyat" being very wide, they have restricted it and made the consent applicable only in respect of those holding in the aggregate not less than half the occupied area of wet lands under the tank. "With the approval of the majority of not less than two-thirds of the raiyats" was how the draft stood before. The following words have been added "holding in the aggregate not less than half the occupied area of wet lands under the tank" after the word "raiyats" in clause 2.

The amendment is quite obvious and I do not think there is any explanation needed. The other alterations are merely verbal.

Mr. C. S. Balasundaram Iyer.—SIR,—I second it.

The motion was put to vote and passed.

Mr. A. R. Banerji.—SIR,—I beg to move that the Bill as amended be passed.

Mr. C. S. Balasundaram Iyer.—SIR,—I beg to second the motion.

The motion was put to vote and passed.

The Minor Tank Restoration Bill.

Mr. A. R. Banerji,—SIR,—I beg to move that the report of the Select Committee on the Minor Tank Resoration Bill together with the Bill as amended by them be considered in Council. This is another of the small Bills, relating to the Tank Restoration Scheme. It was introduced into this Council last February, and was referred to the Select Committee on the 28th April. The report of the Select Committee explains the modifications that they have suggested. It has been considered that as the scheme sanctioned by Government in 1914 relates only to restoration and improvement and not to the construction of new tanks it is desirable to limit it to the restoration and improvement only. The next suggestion is

that the orders of the Deputy Commissioner should be made final and therefore a clear clause has been suggested which runs as follows:—

4. "At any time within thirty days from the date of the notification of the agreement published in the village, application may be made to the Deputy Commissioner objecting to the agreement on the ground of some irregularity, mistake or fraud in recording it. On the expiration of thirty days from the date of publication in the village, if no such application is received or if such application is made and rejected the Deputy Commissioner shall make an order confirming the agreement and his order shall be final."

I think the members will all agree that the re-drafting of this clause is a great improvement on the original draft. I therefore beg to move that the report of the Select Committee on the Minor Tank Restoration Bill together with the Bill as amended be considered in Council.

Mr. C. S. Balasundaram Iyer.—SIR,—I second it.

The motion was put to vote and passed.

Mr. A. R. Banerji.—SIR,—I beg to move that the Bill as amended be passed.

Mr. C. S. Balasundaram Iyer.—SIR,—I second the motion.

The motion was put to vote and passed.

Bill to amend the Law relating to the Registration, Surveillance and Control of Criminal Tribes.

Mr. D. M. Nararasinga Rao.—SIR,—I beg to move "that the report of the Select Committee on the Bill to amend the law relating to the registration, surveillance and control of Criminal Tribes together with the Bill as amended by them be considered in Council."

The Bill as amended has been duly published and the other legal formalities prescribed in Rule 46 of the Rules of Business also complied with.

Six amendments have in all been made by the Select Committee of which three are important ones. It is unnecessary to repeat the reasons given in the report for the three amendments of a minor character relating to old clauses 1, 16 and 18. A few supplemental observations will be made in the case of the more important ones.

The first important amendment is represented by the insertion of new clause 11 and the consequential amendment of old clause 11. The former now prescribes the submission of a report by the Inspector-General of Police to the Government giving full reasons for restricting the movements of or settling criminal tribes and also lays down the particulars of information required by Government for concluding whether the proposal is expedient or not. In view of the very responsible nature of this necessary power reserved by Government, this provision is salutary. It ensures a thorough consideration of each question as it comes up. The provision is a reproduction of section 11 of the British Indian Act with a single difference, *viz.*, while the Local Government is the reporting and the Supreme Government, the sanctioning authority in British India, the Inspector-General of Police submits a report for the orders of Government here.

The second important amendment touches new clause 18. Originally, the power to discharge or remove persons from settlement or school had been reserved to Government, as in the case in British India. As, however, this power is not of a very responsible character, it is proposed to enable Government to authorize any officer whom they might consider suitable for the purpose, to exercise the same whenever it is necessary to do so for promoting despatch of work.

The other important amendment is introduced by new clauses 19 and 20 and new sub-clause (*n*) of new clause 21, which go together.

Clause 19 takes power on behalf of Government to apply clause 20 to any criminal tribe declared to be as such outside Mysore.

Clause 20 prescribes a written permit granted by the Inspector-General of Police as a condition precedent for any such tribe or member thereof entering into Mysore. If this is not fulfilled, the person or persons concerned may be required by a written order to leave Mysore within a week. Failure to do so would be punishable with imprisonment, which may extend to six months or with fine which may extend to two hundred rupees or with both and the person or persons concerned shall also be liable to be sent out of Mysore on the expiry of the sentence.

Sub-clause (*n*) of new clause 21 takes power to frame rules in the matter.

These provisions are essentially based on Section 19 of the Hyderabad Act. In two material respects however, new clauses 19 and 20 differ from the law in Hyderabad. Under clause 19, the power to issue notification rests with Government whereas the Inspector-General of Police can exercise it in Hyderabad and under clause 20, the fine that can be imposed on the offender is limited to a maximum of Rs. 200, whereas in Hyderabad, it is unlimited.

The necessity for these provisions arises out of certain *apriori* considerations. Their preventive value is obviously high. They tend to render supervision over foreign criminal tribes entering Mysore far more effective. They further give practical effect to the general principle, usually recognized, that each Government should be responsible for their own criminal tribes and that these tribes should as far as possible be settled by the principle of domicile.

The principle underlying these provisions is but an extension of that contained in clause 26, which is based on Section 25 of the Criminal Tribes Act.

It is believed that the question of extending the application of Section 25 of the Criminal Tribes Act to Native States having a similar law is under consideration in British India.

Rajasabhabhushana Dewan Bahadur Mr. C. Srikantesvara Aiyar.—SIR,—I second the motion.

The motion was put to vote and passed.

Mr. D. M. Narasinga Rao.—I beg to move that the Bill as amended be passed.

Rajasabhabhushana Dewan Bahadur Mr. C. Srikantesvara Aiyar.—SIR,—I second the motion.

The motion was put to vote and passed.

The Law relating to Trading Companies and other Associations.

Mr. A. R. Banerji.—SIR,—The next motion I have to make is a formal one. I beg to move that my name be substituted for that of Mr. K. S. Chandrasekhara Aiyar, B.A., B.L., in the Select Committee appointed to consider the Bill to amend the law relating to Trading Companies and other Associations.

Mr. C. S. Doraswami Iyer.—SIR,—I beg to second the motion.

The motion was put to vote and passed.

Bill to amend the Law relating to Arbitration.

Mr. A. R. Banerji.—SIR,—I beg to move that my name be substituted for that of Mr. K. S. Chandrasekhara Aiyar, B.A., B.L., in the Select Committee appointed to consider the Bill to amend the law relating to Arbitration.

Mr. C. S. Doraswami Iyer.—SIR,—I beg to second the motion.

The motion was put to vote and passed.

Bill to amend the Mysore Muzrai Regulation, 1913.

Rajasevadhurina Mr. M. Kantaraj Urs.—SIR,—I beg to move that my name be substituted for that of Mr. K. S. Chandrasekhara Aiyar, B.A., B.L., in the Select Committee appointed to consider the Bill to amend the Mysore Muzrai Regulation, 1913.

Rajasabhabhushana Dewan Bahadur Mr. C. Srikantesvara Aiyar.—SIR,—I beg to second the motion.

The motion was put to vote and passed.

The meeting then adjourned *sine die*.

By Order,
G. SREENIVASA IYER,
Secretary, Mysore Legislative Council.